



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 171] CHANDIGARH, TUESDAY, DECEMBER 03, 2024 (AGRAHAYANA 12, 1946 SAKA)

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 25th November, 2024

No. 474028-HII(2)-2024/17719.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **45/2019** dated **20.09.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SANDEEP SINGH S/O GYAN SINGH R/O HOUSE NO.1020, SECTOR 8-C, CHANDIGARH.
(Workman)

AND

1. CHIEF ENGINEER, PUBLIC HEALTH, UT, SECTOR 9, CHANDIGARH.
2. SUPERINTENDING ENGINEER, PUBLIC HEALTH, UT, SECTOR 9, CHANDIGARH.
3. EXECUTIVE ENGINEER, PUBLIC HEALTH, DIVISION NO. 8, SECTOR 9, CHANDIGARH.
4. SUB-DIVISIONAL ENGINEER, PUBLIC HEALTH, SUB DIVISION NO.8, SECTOR 9, CHANDIGARH.
5. M/S SSB CONTRACTUAL SERVICES PVT. LTD., NO.3304, GROUND FLOOR, NEAR GOVERNMENT SECONDARY SCHOOL, SECTOR 40-D, MAIN ROAD SECTOR 40-D, CHANDIGARH - 160036 THROUGH SH. BHARAT KAPOOR - PROPRIETOR.
6. SH. SHAMSHAD ALI - TUBEWELL OPERATOR (CONTRACTUAL) S/O (UN-KNOWN) O/O PUBLIC HEALTH, SUB-DIVISION NO. 8, PUNJAB CIVIL SECRETARIAT, SECTOR 9, CHANDIGARH. (Management)

AWARD

Signature Not Verified
Digitally signed by
Jalinder Kumar
Date: 2024.12.03
15:46:19 IST
Reason: Published
Location:

1. Sandeep Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

(2441)

*This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>*

2. Briefly stated the averments of claim statement are that applicant (*here-in-after 'workman'*) was initially appointment as Tubewell Operator on 01.09.2016 in PH Division No.VII, Public Health Circle, Punjab Civil Secretariat. The workman was not paid minimum wages. The workman was paid ₹ 9,456/- per month in the year 2016. The workman was deployed through outsourcing agency M/s SSB Contractual Services Pvt. Ltd. - management No.5 and working under the control & supervision of Public Health Division No.8, Chandigarh - management No.4. The workman's last drawn monthly wages were ₹ 14,190/- including EPF. No EPF of the workman has been released by the management till date. The workman was not allowed to take any kind of leave during the entire service period. Workman was performing his duties to the entire satisfaction of the administration and his superiors and never gave any opportunity of complaint. The workman was covered under the Employees Provident Fund (EPF) and Employees' State Insurance (ESI) scheme. Every month salary was paid to the workman after making all the legal deductions including EPF and ESI contributions. The contractor-management No.5 never provided any EPF account to the workman. Duty In-charge Shri Ved Parkash in the office of management No.4 used to take ₹ 1,000/- from the workman every month. When workman refused to pay the said amount, the contractor-management No.5 refused him work and on 26.07.2018 engaged fresh hands namely Shri Shamshad Ali - respondent No.6, who is known to Duty In-charge Shri Ved Parkash. On 04.04.2019, the workman submitted a complaint against Mr. Ved Parkash - Duty In-charge and Mohd. Suleman working as Chowkidar in the office of Punjab Civil Secretariat, Chandigarh to the Chief Engineer, Public Health, U.T. Chandigarh - management No.1 and to the Advisor, U.T. Chandigarh stating that he worked as Tubewell Operator on contract basis for three years in the office of Punjab Civil Secretariat, Chandigarh from 01.09.2016 to 19.07.2018. Mr. Ved Parkash, his Duty In-charge was getting ₹ 1,000/- per month from him and when he refused to pay him, the workman's services were terminated and a person namely Shamshad Ali, known to Mr. Ved Parkash has been appointed on contract basis against the post on which workman was working but till date no action has been taken. The refusal of work resulting in termination by the contractor is illegal, arbitrary, contravention to the provisions of the ID Act and in violation to the principle of natural justice. Therefore, termination is void ab-initio as the workman was not served any notice or paid any compensation. The services of the workman have been terminated illegally vide verbal order dated 19.07.2018 by the contractor at the instance of management of Public Health Department, Chandigarh in violation of Section 25F of the ID Act. The workman was neither issued charge sheet nor any inquiry was conducted. Neither notice nor notice pay in lieu of notice period nor any retrenchment compensation was paid to the workman at the time of termination of his services, due to which his retrenchment results into termination. The amount of increased wages as per DC rates, every year is due as arrears against the contractor. The workman sought information relating to his service and EPF details through RTI from the management but nothing has been provided to him till date. At the time of termination of his services, neither the post held by him was abolished nor the work of said post has been receded nor any such or similar situation has arisen, therefore, the action of terminating the services of the workman without any reason and without any notice is illegal, arbitrary and violation of provisions of the ID Act. The workman is not gainfully employed from the date of termination of his services. The workman is facing financial hardship due to termination as he is the sole bread earner of his family. The workman is going through a hard time due to illegal termination of his services. The workman has completed more than 240 days continuously with the management as workman remained in service w.e.f. 01.09.2016 till 19.07.2018. The management has appointed / engaged fresh workmen after termination of services of the workman. The management has violated Section 25F and 25H of the ID Act. The management has not maintained the seniority list of workmen as required under Section 77 of the ID Act. The management has not followed the principle of 'first come last go' at the time of termination of his services and retained the juniors to the workman. The action of the management is opposed to Section 25G of the ID Act. The management has engaged junior after termination of workman's services. The workman has not been given preference required under Section 25H of the ID Act. The management adopted unfair labour practice in terminating the services of the workman as the work for which he was appointed is still existing with the management and new man has been engaged against his post and junior to workman has been retained in service. It is settled law that a contractor / temporary employee cannot be replaced with another set of contractual employees. The workman approached the management not to terminate his services but the management refused for the same. The managements are responsible for illegal termination. The managements

have not paid gratuity, leave encashment, bonus etc. to the workman. Reliance is placed upon judgment dated 02.07.2013 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.13555 of 2013 titled as Shiv Kesh & Others Versus State of Haryana & Others and judgment dated 29.01.2010 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.1504 of 2010 titled as Major & Others Versus State of Haryana & Others. The workman served a demand notice dated 23.04.2019 and raised industrial dispute before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, who initiated conciliation proceedings which failed. In failure report of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh bearing Memo No.4449 dated 23.10.2019 advised to approach the appropriate forum for the adjudication of the dispute as per provisions of Section 2A of the ID Act. Prayer is made that order of termination of services of the workman w.e.f. 19.07.2018 be set aside being illegal and workman may be reinstated with continuity of service along with full back wages and consequential benefits and the management may be directed to pay arrears of ₹ 22,760/- less payment of wages from 01.09.2016 to 12.12.2017 and arrears of increased DC rates w.e.f. 01.09.2016 to 19.07.2018 along with interest @ 24% from the due date till actual payment. The management may be directed to grant any other relief, pass any other order as deemed fit and proper in the facts & circumstances of the case.

3. On notice, managements No. 1 to 4 contested the claim statement by filing joint written statement through Law Officer wherein preliminary objections are raised on the ground that the workman has not approached this Court with clean hand and has mentioned the wrong facts regarding his designation. There was no requisition / tender floated by the answering respondent (*here-in-after 'management'*) for engaging Tubewell Operator, as such the question does not arise for making any such appointment by the contractor i.e. management No. 5. The answering management had floated the tenders for engaging Operators and Helper, as such the workman could have been engaged as Operator only.

4. Further, preliminary submissions are made to the effect that the Public Health Wing of the Chandigarh Administration is functioning under the overall control of Chief Engineer who is assisted by the Superintending Engineer and is further assisted by number of Executive Engineers with the assistance of various Sub Division Engineer in respect of their respective Sub division. The Public Health Division No. 8, Sector-9, Chandigarh through its Executive Engineer had entered into contract on dated 07.07.2017 with M/S SSB Contractual Service Pvt. Ltd. H. No. 382/2, Block B, Dashmesh Nagar, Naya Goan for operation / running and preventing maintenance of Tube well and Booster installed for Assembly Hall and Secretariat Building of Punjab and Haryana, Sector 1, Chandigarh. The term of the contract was from 07.07.2017 to 06.07.2018 and thereafter the same was extended up to 19.07.2018 with the mutual consent of both the parties. Thereafter the contract agreement came to an end with an efflux of time. As per the terms & conditions of the contract agreement, the contractor i.e. management No. 5 had to engage Operators and Helper for the smooth functioning of Tubewell and Booster besides fulfillment of the term & conditions of the contract. The answering management has no control over the working of the contractor and it is for the contractor to engage suitable workman for the smooth running of the job as assigned on contract to it. Therefore, the answering management cannot recommend or compel the contractor to engage any workman of their choice. Moreover, it is not certain as to whether the previous contractor will be successful in obtaining tender or contract for the next year in future. The answering management had again entered into fresh contract agreement for operation / running and preventing maintenance of Tubewell and Booster installed for Assembly Hall and Secretariat Building of Punjab and Haryana Sector 1, Chandigarh on 20.07.2018 for the period of 8 months & 15 days & extended up to 15.07.2019 and the said contractor was working accordingly till date by engaging appropriate number of Operator / Helper as per the contract agreement. The workman was engaged / appointed by the Contractor i.e. management No. 5 and there is no any sort of relationship between workman and answering management.

5. Further on merits, it is stated that there was no requirement of engaging any Tubewell Operator at any point of time therefore, the workman could not had been engaged as Tubewell Operator. The answering management had engaged management No. 5 for providing Operator / Helper for operation / running and preventing maintenance of Tubewell and Booster installed for Assembly Hall and Secretariat Building of Punjab and Haryana, Sector 1, Chandigarh. So far as payment of wages are concerned, the same were paid as

per the rates notified by the Deputy Commissioner, U.T. Chandigarh from time to time. Every workman engaged by the contractor was entitled for one day leave / rest after working of six days, meaning thereby in a spell of seven days every workman is having one day rest. So far as the contributions of EPF and ESI are concerned, it is the liability and duty of the contractor to deposit the respective contributions in the concerned office / department. Moreover, the bill of the contractor is cleared only after his submission of proof regarding payment of EPF and ESI contribution of all the workmen engaged by him for the contract with answering management. The allegations levelled by the workman are nothing but an attempt to tarnish the image of the department by putting baseless and frivolous allegations against the regular employee of the office of answering management. It has already been made clear in preliminary submissions that the answering management has no control over the day to day working of the contractor and it is for the contractor to engage suitable workman for the smooth running of the job as assigned on contract to it. Therefore, the answering management cannot recommend or compel the contractor to engage any workman of their choice. Besides, an inquiry was marked to the SDE concerned on the complaint moved by the workman against Mr. Ved Parkash. The S.D.E had called the workman twice vide his office letter No.16 dated 07.01.2020 & No.42 dated 13.01.2020 to attend the office along with evidence, if any. However, the workman failed to appear before the S.D.E. The termination of services by the contractor does not relate to answering management and the reply, if any, is to be given by the management No.5 as the workman was engaged and terminated by the contractor - management No. 5. The answering management had never asked the contractor for removing the workman. It is a matter of record that DC rates are notified from time to time and the office of answering management is following the said rates at all relevant times. The payment to the contractor is released on the basis of calculations made as per the DC rates applicable at that relevant time. The further clarification regarding arrear, if any, can only be given by management No.5. Moreover, UAN Number is issued to all the employees by the contractual agency and they can check the details online any time. The workman was engaged through outsource agency - contractor and further engagement of manpower by the concerned contractor at his own level, likewise, relieving / termination also rests with the contractor i.e. management No. 5. Therefore, it is submitted that the contents do not relates to the answering management. No fresh engagement / appointment has ever been made by the answering management. The workman was neither engaged nor terminated by the answering management. Moreover, the question of maintaining seniority list does not arise at the level of answering management because it has no connection with the workman what-so-ever. Therefore, the workman was not a regular / permanent employee of answering management. Rest of the averments of the claim statement are denied as wrong except para 19, which is denied for want of knowledge and para 21 which is replied being matter of record. Prayer is made that demand notice filed by the workman against the answering management be dismissed being devoid of any merits.

6. Management No.5 contested the claim statement by filing separate written statement through authorised Representative Shri A. K. Bakshi, wherein preliminary objections are raised on the ground that the order of reference and statement of claim are bad in law and not maintainable. The proper and necessary parties have not been impleaded and as such the reference is liable to be dismissed for non-joinder and mis-joinder of proper and necessary parties. The workman is claiming certain reliefs which are beyond the jurisdiction of this Court under Section 10 of the ID Act. The workman has not filed any application under Section 33C(2) of the ID Act to claim such reliefs. The workman himself started remaining absent w.e.f. 20.07.2018 and abandoned the service of the answering management. He has also not completed 240 days of service with the answering management in the preceding 12 months so as to claim benefits of Section 25F, 25G and 25H of the ID Act. As such, the workman is not entitled to any relief from the answering management.

7. Further on merits, it is stated that the contents of para 1 of the statement of claim are substantially correct and admitted except the factum of release of provident fund by the management. The workman is free to withdraw his provident fund deposited by the management with the office of Regional Provident Fund Commissioner. The workman was member of EPF and ESI. The workman may be put to strict proof as to his assertions / allegations. The complaint dated 04.04.2019 was enquired into by the office of management No. 1 to 4. It is denied that the workman worked with the answering management from 01.09.2016 to 19.07.2018. He firstly worked from 01.9.2016 to 30.11.2017 and then from 22.06.2018 to 19.07.2018. The workman

was not in the employment of answering management from 01.12.2017 to 21.06.2018 as the management No.5 was not having any contract of manpower supply with the management No.3 during that period. He might have worked with another contractor during that period but he has not impleaded the said contractor as management in this case. The workman is gainfully employed after leaving the service of the answering management. The workman also did not have requisite qualifications of ITI for the post as per the tender / contract allotted by the management No.3 to the answering management. The workman himself left the service of the management as he was not having the requisite qualification of being ITI and hence, stopped reporting for duty after 19.07.2018. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim may be dismissed.

8. Shri Shamshad Ali - Tubewell Operator (contractual) is impleaded in his individual capacity as respondent No.6, who contested the claim statement by filing separate written statement through Representative Shri Abdul Aziz and later on contested the claim statement through Representative Shri Hemant Parihar. In the written statement filed by respondent No.6 on 07.07.2021, preliminary objections are taken on the ground that the present claim is not maintainable before this Tribunal as the workman does not falls under the definition 'workman' under the ID Act and his grievance is liable to be redressed by the Civil Court not by this Tribunal. The contract of the department with contractor / management No.5 was only up to 19.07.2018. Therefore, the services of the applicant were engaged during the subsistence of the contractor and thereafter, his service was dispensed with, therefore, the workman has not right to continue the service as the contract had already expired. The management department had to engage worker through outsource agency and the nature of job was not permanent. It was the wish of the contractor to engage any person for the work and the workman has no right over the post. During his job, the conduct of the workman was not satisfied, due to which he was not engaged for the contract of the next year. The workman has no right to be continued in service. The workman has not approached this Court with clean hands and has rather mentioned the wrong facts regarding his designation. There was no requisition / tender floated by the official management for engaging Tubewell Operator, as such the question does not arise for making any such appointment by the contractor - management No.5. The official management had floated the tenders for engaging operators and helper, as such the workman could have been engaged as Operator only.

9. Further on merits, the averments of para 1 to 4 of claim statement are denied for want of knowledge. It is stated that once the contract has expired, then the workman has not right to be continued in service. So, no charge sheet or any other notice is required. The fact that increased wages as per DC rates every year are due as arrear against the contractor relates to management No.5. The information allegedly sought by the workman under RTI is denied for want of knowledge. The alleged service period of the workman w.e.f. 01.09.2016 to 19.07.2018 does not relates to the answering respondent. The contract, during which period the workman was engaged, has expired, therefore, the contractor is competent to engage any person for fresh contract. Therefore, there is no violation of the ID Act. Maintenance of seniority list under Section 77 of the ID Act does not relate to the answering respondent. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim application may be dismissed.

10. Workman filed replication on dated 01.12.2021 to the join written statement of management No.1 to 4, separate replication on 29.09.2023 to the written statement of management No.5 and separate replication dated 06.03.2022 to the written statement of respondent No.6, wherein the contents of the written statements except admitted facts are denied as wrong and averments of claim statement are reiterated.

11. From the pleadings of the parties, following issues were framed vide order dated 09.03.2022 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.1 to 4 and workman ? OPM-1 to 4
3. Relief.

12. In evidence workman Sandeep Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W5' (original of Exhibit 'W1' and Exhibit 'W2' seen and returned).

Exhibit 'W1' is copy of temporary entry pass (contract staff) dated 31.12.2017.

Exhibit 'W2' is copy of temporary entry pass (contract staff) dated 30.09.2018.

Exhibit 'W3' is copy of written complaint dated 04.04.2019 filed by Sandeep Singh to The Chief Engineer, U.T. Chandigarh against Mr. Ved Parkash.

Exhibit 'W4' is copy of written complaint dated 04.04.2019 filed by Sandeep Singh to The Advisor U.T. Chandigarh against Mr. Ved Parkash.

Exhibit 'W5' is copy of demand notice under Section 2A(2) of ID Act.

13. On 22.04.2024, Learned Representative for the workman closed evidence of workman in affirmative.

14. On the other hand, managements No.1 to 4 examined MW1 Sahil Sharma - Executive Engineer, Project Public Health, Division No.8, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'MW1/1' to Exhibit 'MW1/3'.

Exhibit 'MW1/1' is attested copies of contract dated 07.07.2017 between Executive Engineer and SSB Contractual Services Pvt. Ltd.

Exhibit 'MW1/2' is attested copies of letter dated 07.01.2020 issued from the Sub Divisional Engineer, W/S Sub Division No.4, Chandigarh to workman Sandeep Singh.

Exhibit 'MW1/3' is attested copies of letter dated 13.01.2020 issued from the Sub-Divisional Engineer, W/S Sub-Division No.4, Chandigarh to the workman Sandeep Singh.

15. Management No.5 examined MW2 B. K. Singh - Director, M/s S.S.B. Contractual Services (P) Ltd., who tendered his affidavit Exhibit 'MW2/A' along with copy of contract dated 22.06.2018 executed between Executive Engineers, Project, P.H. Divn. No.8, Chandigarh and SSB Contractual Services Pvt. Ltd. vide Exhibit 'MW2/1'.

16. Respondent No.6 - Shamshad Ali did not lead any oral or documentary evidence and closed his evidence vide his statement dated 21.08.2024.

17. On 21.08.2024 Learned Law Officer for managements No.1 to 4 also closed evidence. On 21.08.2024 Learned Representative for management No.5 closed oral evidence. On 20.09.2024 Learned Representative for management No.5 closed documentary evidence.

18. I have heard the arguments of Learned Representative for the parties and Learned Law Officer for management No.1 to 4 and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

19. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

20. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management No.1 to 4.

21. Under these issues, workman Sandeep Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W5'.

22. On the other hand, managements No.1 to 4 examined MW1 Sahil Sharma - Executive Engineer, Project Public Health, Division No.8, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of joint written statement of management No.1 to 4 which are not reproduced here to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/3'.

23. Management No.5 examined MW2 B. K. Singh - Director, M/s SSB Contractual Services (P) Ltd., who vide his affidavit Exhibit 'MW2/A' deposed that he is Director of management No.5 and conversant with the facts of the case. The management No.5 had been awarded contract for manpower supply by way of open tender by the management No.3 and on the terms & conditions of the tender. As such tendered dated 22.06.2018 was allotted to management No.5. He further deposed that the workman himself started remaining absent w.e.f. 20.07.2018 and abandoned the service of the answering management i.e. management No.5. The workman has also not completed 240 days of service with the management No.5 in the preceding 12 months. The workman firstly worked with management from 01.09.2016 to 30.11.2017 and then from 22.06.2018 to 19.07.2018. The workman was not in the employment of management No.5 from 01.12.2017 to 21.06.2018 as management No.5 was not having any contract of manpower supply with the management No.3 during that period. The workman might have worked with another contractor during that period. He further deposed that the workman also did not have requisite qualification of ITI for the post as per the tender / contract allotted by the management No.3 to management No.5. The workman himself left the services of the management as he was not having the requisite qualification of being ITI and hence, stopped reporting for duty after 19.07.2018. The workman was offered employment at other locations where management No. 5 had contract and where ITI qualification was not required but the workman refused to accept the offer. MW2 supported his oral version with copy of contract dated 22.06.2018 between management No.3 and management No. 5 vide Exhibit 'MW2/1'.

24. From the oral as well as documentary evidence led by the parties, the undisputed facts emerges are that workman was appointed by the contractor-management No.5 w.e.f. 01.09.2016 as Tubewell Operator and deployed with management No. 3. The workman was covered under the EPF and ESI scheme. The workman was paid monthly wages by the management No.5. The workman was engaged by contractor - management No.5 and was deployed on contract basis with management No.3. Thus, it is admitted position that management No.5 - contractor was employer of the workman. There is no direct relationship of employer-employee between management No.1 to 4 and the workman.

25. The workman has alleged that he remained in continuous employment of management No.5 and remained deployed with management No.3 as contractual worker - Tubewell Operator continuously from 01.09.2016 to 19.07.2018. The period of employment as alleged by the workman is not disputed by management No.1 to 4. The management No.5 has disputed the continuous period of service as alleged by the workman and has taken the plea that firstly the workman has remained in employment from 01.09.2016 to 30.11.2017 and then from 22.06.2018 to 19.07.2018 and there was break in service from 01.12.2017 to 21.06.2018 as the management No.5 was not having any contract of manpower-supply with the management No.3 during that period. The above-mentioned break in service from 01.12.2017 to 21.06.2018 does not stand proved as MW1 (witness of management No.1 to 4) when put to cross-examination by the workman stated that Tender ID 2017-CHD-38288-1 floated by Executive Engineer, Project P.H., Division No.8, Chandigarh was allotted vide letter Exhibit 'MW1/1' to M/s SSB Contractual Services Pvt. Ltd., Naya Gaon by Executive Engineer, Project P.H., Division No.8, Chandigarh. MW1 admitted as correct that the term of contract was from 07.07.2017 to 06.07.2018 and the same was extended up to 19.07.2018, as alleged by him in para 4 of his affidavit Exhibit 'MW1/A'. MW1 further stated that during the contract period mentioned above, M/s SSB Contractual Services Pvt. Ltd. was working with the management No.1 to 4. From the aforesaid version of MW1 it is sufficiently proved on record that the workman remained in continuous employment without any break in service of management No.5 - contractor from 01.09.2016 to 19.07.2018. The workman has alleged that his services were terminated by the contractor with verbal order dated 19.07.2018 at the instance of management No.3

without following the conditions laid down under Section 25F of the ID Act. In view of continuous service of the workman from 01.09.2016 to 19.07.2018 under management No. 5 - contractor, the workman is proved to have completed continuous service of 240 days in 12 calendar months preceding termination.

26. Learned Representative for management No.5 argued that the services of the workman were not terminated by the contractor but last contract between the management No.3 - department and management No.5 - contractor which was for period w.e.f. 17.07.2018 to 31.03.2019 (8 months and 15 days) allotted vide letter dated 22.06.2018 / Exhibit 'MW2/1' expired by efflux of time and the management No.3 allotted next tender / contract to some other contractor. Furthermore, one of the conditions of allotment of contract for the period 17.07.2018 to 31.03.2019 was to strictly comply the terms & conditions of D.N.I.T. which requires that Operator shall have passed a certificate examination of ITI from Govt. recognised institute / Board in electrical / mechanical or with two - year practical experience handling machinery such as Electric Motor, Pumps etc. Learned Representative for management No.5 vehemently argued that the workman was not holding requisite qualification of ITI for the post of Operator as per the tender / contract allotted by management No.3 vide allotment letter dated 22.06.2018 / Exhibit 'M2/1', therefore, the management No.5 - contractor was not in a position to deploy the workman with management No.3. The management No.5 offered the workman employment at other locations where the management No.5 had contract and where ITI qualification was not required but the workman refused to accept the offer. On the other hand, Learned Law Officer for management No.1 to 4 argued that the workman was employee of the contractor - management No.5 and managements No.1 to 4 has nothing to do with the appointment and termination of services of the workman. To my opinion, no doubt the managements No.1 to 4 is competent to put a condition of minimum qualification to engage a contractual worker. The workman / AW1 in his cross-examination stated that he is not ITI qualified. The period of contract under the allotment letter Exhibit 'MW2/1' has already expired on 31.03.2019 by efflux of time and thereafter there is no further contract between the management No.3 and management No.5. After expiry of the period of contract on 31.03.2019, the management No.3 has given contract to some other contractor. Since the workman was employee of management No.5 - contractor and the workman had fulfilled the requirement of Section 25B of the ID Act, therefore, even on expiry of contract of management No.5 - contractor with the department i.e. managements No.1 to 4 and even if the workman did not fulfil the required conditions of educational qualification of allotment letter Exhibit 'MW2/1', the management No.5 - contractor being employer was bound to offer alternative employment to the workman. The plea taken by MW2 in his examination-in-chief vide his affidavit Exhibit 'MW2/A' that workman was offered employment at other locations where the management No.5 have the contractor and where ITI qualification was not required, does not stand proved as the management No.5 did not prove into evidence any document or written letter through which the alternative employment was offered by the contractor to the workman. The workman / AW1 when put to cross-examination denied the suggestion as wrong that management No.5 offered him alternative employment available with him, since he was not eligible for deployment as Pump Operator as he has not passed ITI. AW1 denied the suggestion as wrong that he did not accept the offer and left the employment of his own accord. AW1 stated that he is ready to join today, if management No.5 offer him alternative job where ITI qualification is not required. AW1 further stated that he is not doing any job after termination of his services on 19.07.2018. Learned Representative for the management No.5 by referring to cross-examination of AW1 wherein he stated that the contractor / management No.5 did not terminate his service, argued that it is own case of the workman that contractor did not terminate his service. To my opinion, the aforesaid arguments advanced by Learned Representative for management No.5 carries no force as no inference can be drawn from stray sentence deposed by a witness and his entire testimony is to be taken into consideration. As discussed above, from the cross-examination of AW1 it is proved that as workman did not acquire the educational qualification of ITI as required under allotment of tender Exhibit 'MW2/1', the contractor did not deploy the workman with management No.3. Besides, the contract between management No.3 and management No.5 expired by efflux of time on 31.03.2019. It is the employer-management No.5 which not only failed to offer alternative employment to the workman with some other organisation but also failed to comply

with the mandatory conditions laid down under Section 25F of the ID Act. If for the sake of arguments, it is assumed that workman abandoned the job, in that situation also the management No.5 - employer was duty bound to issue any notice to the workman requiring him to rejoin duty or in case the workman absented without getting the leave sanctioned then to initiate the disciplinary proceedings against him. But no such action is proved to have been taken by the management No.5 - contractor. It is not the case of the management No.5 that before terminating the services of the workman, any prior notice is issued or notice pay is offered in lieu of the notice period or retrenchment compensation is paid to him. There is no evidence, proving that respondent No.6 was deployed by the contractor - management No.5 as the contract between the management No.1 to 4 and management No.5 ended on 19.07.2018 and thereafter, not extended or allotted afresh. The workman would have been provided alternative employment by his employer - contractor - management No.5 with some other organisation, which does not require educational qualification of ITI. The law laid down in the judgment dated 02.07.2013 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.13555 of 2013 titled as Shiv Kesh & Others Versus State of Haryana & Others and judgment dated 29.01.2010 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.1504 of 2010 titled as Major & Others Versus State of Haryana & Others relied upon by the workman is well recognised by this Court but the ratio of the ruling is not applicable to the facts of the present case.

27. In view of the discussion made above, the termination of service of the workman w.e.f. 19.07.2018 by the management No.5 - contractor is illegal being violative to Section 25F of the ID Act. In the absence of any contract between managements No.1 to 4 & management No.5, keeping in view the length of service of the workman from 01.09.2016 to 19.07.2018 and last paid monthly wages of the workman @ ₹ 14,190/-, coupled with the fact that no alternative job is offered to the workman, the management No.5 is held liable to pay lump compensation of ₹ 30,000/-.

28. Accordingly, issue No.1 is decided in favour of workman and against management No.5. Issue No.2 is decided in favour of managements No.1 to 4 and against workman.

Relief :

29. In the view of foregoing finding on the issue No.1 above, this industrial is allowed. The managements No.5 is held liable to pay lump compensation of ₹ 30,000/- to the workman. The management No. 5 is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the compensation amount from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

Dated : 20.09.2024.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 25th November, 2024

No. 474130-HII(2)-2024/17731.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **19/2023** dated **19.09.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SURAJ BHAN AGED 27 YEARS S/O BIR BAL, R/O HOUSE NO.953/A, VILLAGE DARYA, UNION TERRITORY CHADIGARH. Workman)

AND

1. THE CHANDIGARH ADMINISTRATION THROUGH THE COMMISSIONER, MUNICIPAL CORPORATION, CHANDIGARH, SECTOR 17, UNION TERRITORY CHANDIGARH.
2. PROPRIETOR/PARTNER/MANAGER, M/S INDIAN ENGINEERING EARTH MOVERS WORK, MRF-CUM-GARBAGE TRANSFER STATION, INDUSTRIAL AREA, PHASE – I, UNION TERRITORY CHANDIGARH. (Management)

AWARD

1. Suraj Bhan, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that after retrenchment / termination of services, the workman raised the demand notice dated 22.07.2022 under Section 2A of the ID Act, as amended up-to-date and copy of the same was sent to the managements through registered post with acknowledgment due, with the prayer to re-instate the services of the workman with continuity of service, full back wages and along with all other service benefits applicable from time to time. When the workman received no response from the managements, on 23.08.2022 he submitted a set of five copies of demand notice along with an authority letter before the Assistant Labour Commissioner-cum-Conciliation Officer, UT, Chandigarh with the prayer to summon the managements and initiate the conciliation proceedings at the earliest possible for the reinstatement of the workman, in the interest of justice. The Assistant Labour Commissioner-Cum-Conciliation Officer summoned the managements and held the conciliation proceedings, but the proceedings remained unsuccessful.

3. It is further submitted that the employer No. 1 is (*here-in-after 'management No.1'*) the principal employer and the employer No.2 (*here-in-after 'management No.2'*) is the contractor/employer of the workman. The management No.2 selected the workman and appointed him as Machine Operator, in the Health Department of the Municipal Corporation, Chandigarh. The workman joined the services of management w.e.f. 01.03.2021 and worked continuously without any break or interruption till 04.07.2022, when the management No.2 told that its workers are going on strike to demand increased wage rates for the workers from the Municipal Corporation and when the rates will be settled, workman will be called for duty. At the time of his appointment, the workman was not given appointment / designation letter. He was neither issued identity card nor issued attendance card. The management used to pay the earned wages of the workman through Bank Account of the workman. The workman worked as Machine Operator at the Garbage Transfer Centre in Industrial Area, Phase – I, which is adjoining the CTU Depot No.1 from 8:00 AM to 4:00 PM in general shift. The workman was operating power press machine, which is used for compressing the garbage after the collection and segregation and the compressed garbage is transferred to other centre for further processing. At the time of his retrenchment, the workman was drawing wages at the rate of ₹ 10,000/- (Rupees Ten Thousand) per month. The workman had completed more than 240 days of his duties in the calendar year. Management No.1 and 2 were indulging in unfair labour practices on the following grounds :-

- (i) The payment of Minimum rates of wages fixed by the Labour Department, Chandigarh Administration was not implemented.

- (ii) No wage slips were issued to the workman and other workers.
- (iii) The workers working on machines and vehicles are not covered under ESIC scheme in violation of labour laws.
- (iv) The workers were neither issued appointment letters, nor are issued Identity cards and attendance cards.
- (v) The workers are not paid earned wages on pay day etc.

The workman and other workers were raising the issue of implementation of labour laws and the management was biased against all such workers and used to threaten their dismissal. The workman performed his duties up to the entire satisfaction of management and his superiors and he was never issued any show cause notice, warning, charge sheet or any other memo to question his work and conduct throughout his actual service period of more than 01 years and 04 months. At present the management No.2 had deployed workers at various places under the control of management No.1 in the Union Territory, Chandigarh. The workman was not enrolled under ESIC whereas he is Machine Operator. The workman was enrolled under the Provident Fund Scheme. The workman's share was deducted from his earned wages and the same was deposited with the Provident Fund Office. The deductions were made from his earned wages but no proof of the same was given to the workman. After a couple of days on 04.07.2022 (the date on which the workman was advised to stay at home), the workman came to know that there is no strike of work and the work is going on. The workman went to the office to know about his duty. The Peon in the office did not allow the workman to meet the Official In-charge and told the workman to pay ₹ 30,000/- for joining duty as regular workman, otherwise there is no job for him. At the time of verbal refusal of duty to the workman, his junior workers were retained in the services and the services of the workman were retrenched to adjust someone near & dear to the management's high officials. The services of the workman were directly under the control of management No. 1. Management No.2 was not in the picture. The management No.1 used to shift the amount of earned wages of the workers in the account of management No.2 and then payment of salary / earned wages of the workman were paid to the workman from the account of the contractor i.e. management No.2. Management No.1 and management No.2 are defaulters for the payment of earned wages of the workman. The earned wages were released to the workman sometimes on the 15th and 20th instead of 7th of every month. At present the payment of earned wages of the workman is unpaid for the months of May and June, 2022. The termination / retrenchment of the workman is illegal, unjustified, against the principles of natural justice, highly arbitrary and patently mala fide on the following grounds :-

- (i) The workman actually worked continuously and without any break or interruption in his services for 01 years and 04 months when he was verbally refused duty. He was neither served notice of termination / retrenchment nor paid notice pay and retrenchment compensation for his retrenchment. As such, the retrenchment is in violation of Section 25F of the ID Act as amended up to date.
- (ii) At the time of verbal refusal for duty on 04.07.2022, juniors to him were retained in the services and his services were retrenched.
- (iii) No charges were framed against the workman, no enquiry was held and no opportunity was given to the workman to defend himself before the verbal termination orders.

The workman is entitled for re-instatement along with continuity of services, full back wages and along with all other service benefits applicable from time to time. Prayer is made that the workman may be reinstated with continuity of service, full back wages and all other service benefits applicable from time to time.

4. On notice, management No.1 appeared through its authorized representative and contested the claim of the workman by filing written statement on 20.04.2023, wherein preliminary objections are raised on the ground that the workman has not approached this Court with clean hands and has suppressed the true and material facts of the case. The workman in the present demand notice is not an employee of the answering management and hence the present demand notice against/qua the answering management may be dismissed

on this ground only. There is no industrial dispute exists between workman and answering management as the essential condition of person being a workman as provided in Section 2(s) of the ID Act is that "*There must be an employment of his by the employer and there must be a relationship between employer and him as an employer and an employee or master and servant*" which clearly lapse in the present case. The workman was neither appointed nor terminated by the answering management. Further, the workman was employed by the management No. 2 and under direct control and supervision of management No.2 and salary to him was also paid by the management No.2, therefore, the question of violation of Section 25F of the ID Act does not arise qua the answering management as no industrial dispute exists between the workman and answering management.

5. On merits, it is admitted that the workman had raised a demand notice upon the answering management and other management but the answering management is not the employer of the workman and the management No.2 is the whole and sole employer of the workman. The answering management has already submitted its detailed reply in the said case to the demand notice so raised by the workman on 02.12.2022, rather it is the original employer of the workman who is also the management No.2 in the instant claim statement, who has not submitted his reply to the application made by the workman. It is a matter of record that the Assistant Labour Commissioner-Cum-Conciliation Officer summoned the managements and held the conciliation proceedings, but the proceedings remained unsuccessful. It is admitted that management No.2 is the contractor of the answering management. However, the management No.2 is merely a contractor of the answering management under a written contract. The copy of the original contract given to the management No.2 with the Smart City Project is annexed with written statement. The workman never worked for the office of the answering management and neither the answering management issued any identification card to the workman and the dispute is *inter-se* the management No.2 and the workman, the answering management has nothing to do in the same. Furthermore, it is an admitted fact on behalf of the workman that the payments in his account were made by the management No.2 and not by the answering management. The answering management never transferred the workman to any place and it may have been his principal employer i.e. the management No.2., who has employed the workman as per their own choice as he was employed with management No.2 and not with the answering management. The answering management never paid any salary to the workman and neither did the answering management deduct any amount for the provident fund/ ESIC. Remaining averments of the claim statement are denied. Prayer is made that claim of the workman qua answering management No.1 may be dismissed.

6. On notice, management No.2 appeared through its authorized representative and contested the claim of the workman by filing written statement on 12.07.2023, wherein preliminary objections are raised on the ground that the workman has not approached this Court with clean hands and has suppressed the true & material facts of the case. The answering management is a small contractor, based in Indore. The answering management was hired by M/s Hyva (India) Pvt. Ltd. (therein mentioned as Hyva) as a sub-contractor, for a specific work of operating a Garbage plant in Industrial Area, Phase – I, Chandigarh, for a specific period of time. The above said specific work was a part of the Smart City project of management No.1, for which there was a written agreement between management No.1 and M/s Hyva (India) Pvt. Ltd. However, answering management was not a party to that above said agreement. Moreover, there was no written agreement between the answering management and M/s Hyva (India) Pvt. Ltd. for above said work of operating a plant. The time period for which the answering management was hired by Hyva was 3 months, starting from 22.07.2021, which was extended till June, 2022. Thereafter, the work of the project ended by management No.1. The management No.1 stopped payments to Hyva, in result to which the payments of the answering management were stopped by Hyva, and the operation of the plant was taken over by management No.1 in its hands. The management No.1 is the primary employer, who hired Hyva, who then hired answering management No. 2 for this project. The answering management had employed the present workman as a casual labour for above said specific work on 22.07.2021, initially for a period of 3 months on a fixed salary of ₹ 10,000/- per month. However, due to the extension of the time period of the above said work, the workman worked with the answering management till June, 2022, for 11 months. The management No. 1 also took over the employees working in the plant with the answering management in June 2022. However, the management No.1 did not employ the workman, that is why the workman has started the present proceedings in this Court. Furthermore, the workman did not communicate with the answering management after June 2022 for any compensation or

re-instatement. The workman was employed by the answering management for a specific period of time of 3 months, thus, the question of retrenchment, termination of the workman under the ID Act does not arise per se as the present workman was employed for above said project for a specific time and after completion of the project and stipulated time, the disengagement of the workman cannot be said to be retrenchment under this Section 2(oo)(bb). Moreover, the answering management has cleared salary and all the dues of the workman till June 2022 and nothing has been due of the workman towards answering management. Since the workman was employed for a period of 3 months only for doing a specific work as casual labour, therefore, there was no need to issue appointment letter and identity cards. However, the attendance register of the workman was maintained. Furthermore, the salary of the workman was given in cash as per the convenience of the workman himself. The PF was also given in cash when the present workman asked to pay in cash. Averment made in preliminary objections are reiterated and remaining averments of claim statement are denied. Prayer is made that the claim of the workman qua management No.2 may be dismissed.

7. The workman filed replication jointly to the written statement of management No.1 & 2, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 02.11.2023 :-

1. Whether the services of the workman are terminated illegally ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all attending benefits, as prayed for ? OPW
3. Whether the claimant-workman falls within the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPW
4. Whether the workman has no approached the Court with clean hands and suppressed the material facts ? OPM
5. Relief.

9. During the pendency of the industrial dispute, the parties effected compromise. On 19.09.2024, the workman got recorded his statement, which is reproduced as below :-\

"Stated that, I have effected compromise with the management No.2 i.e. M/s Indian Engineering Earth Movers Work-contractor. I have received the compromise amount of Rs.25,000/- by way of A/c Payee Cheque No.000183 dated 19.09.2024 drawn on Bank of Baroda, issued in my favour by Proprietor of management No.2, towards full and final satisfaction of the present claim statement. Photocopy of the cheque is Mark-A. In view of the compromise, I do not press the claim statement/Industrial Dispute Reference and same may be disposed off being compromised."

10. Statement of the workman was countersigned by his Representative.

11. Heard. In view of the aforesaid statement of the workman, the present industrial dispute is disposed off as settled by way of compromise. In view of the compromise, the issues have become redundant, thus stands decided accordingly. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 19.09.2024.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 25th November, 2024

No. 473897-HII(2)-2024/17733.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **105/2021** dated **24.09.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AVDESH KUMAR, H.NO.1716/2, SECTOR 29-D, CHANDIGARH. (Workman)

AND

1. M/S D.K. CHEMICALS (WRONGLY SPELLED AS CHEMICALES) PVT. LTD., 14, NAZAFGARH ROAD, NEAR ZAKIR CHOWK, NEW DELHI-110015
2. M/S D.K. CHEMICALS (WRONGLY SPELLED AS CHEMICALES) PVT. LTD., SCO NO.288, SECTOR 32-D, CHANDIGARH. (Management)

AWARD

1. Avdesh Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management No.1 as Accountant on 01.05.1999 at Delhi. The workman worked there up to 30.04.2013 when he was transferred to Chandigarh with management No.2 on 01.05.2013. The management No.1 is the Head Office and management No.2 is the branch office. The workman remained in continuous & uninterrupted employment from 01.05.1999 to 17.08.2015, when his services were illegally & wrongfully terminated by refusing of work. The workman was drawing ₹ 12,950/- per month as wages at the time of termination. On 17.08.2015 when the workman went to attend his normal duty, he was refused work by the management No.2 without assigning any reason and notice. The workman lodged a complaint dated 26.03.2019 with the Labour Inspector, U.T. Chandigarh. The management No.2 appeared before the Labour Inspector and admitted the date of appointment i.e. 01.05.1999 with the management No.1, duration of service with management No.1, date of transfer to Chandigarh - management No.2 w.e.f. 01.05.2013, date of termination i.e. 17.08.2015 and the wages drawn per month. The management No.2 refused to take the workman back on duty. For his reinstatement, the workman served upon the managements a demand notice dated 30.12.2019. The managements neither replied demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. Action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of appointment till date. Prayer is made that the workman may be reinstated with

continuity of service along with full back wages and all attendant benefits without any change in his service condition.

3. On notice management contested the claim statement by filing written statement dated 27.01.2023 wherein preliminary objections are taken on the ground that the claim statement has been filed with malafide intention and ulterior motive to harass and exploit the managements. The claimant (*here-in-after 'workman'*) has not approached this Court / Tribunal with clean hands and concealed true and actual facts from this Court with ulterior motive and wants to take advantage of his own wrongs. The demand notice sent by the workman is totally false and irrelevant. The workman has deliberately suppressed and concealed the material facts. The workman joined the managements in the year 1999 at the office in Delhi. Then he was transferred to Chandigarh Branch. The workman took paid leaves from the office from 7th April to 18th April, 2015 due to demise of his mother. The workman remained absent from the office since 08.08.2015 to 17.08.2015 without informing anyone concerned. The management suffered losses due to his absence and unprofessional behaviour. The workman used to remain absent from office on regular basis. Besides, workman started doing his own work side by side and that was the main reason that the workman left doing work for the management. The workman has also taken a truck (Model 2010) bearing registration No.HR-55-L-0658 from the managements to do his own work for which consideration amount has not been paid till date by the workman. Legal notice regarding the same has been sent to the workman. The workman filed a complaint against the managements to Assistant Labour Commissioner, Chandigarh alleging that on 17.08.2015 managements refused him work but he has not given or attached any document or mail whereby the managements refused to take his services. The workman is levelling false allegations and claims on the managements to exploit the management. The management even gave a reply dated 31.07.2019 and 09.09.2019 to the complaint filed by the workman before the Assistant Labour Commissioner. The workman has himself admitted in the complaint filed by him on 17.08.2015 that he has taken an amount of ₹ 73,001/- as his dues and has accepted that amount from the management and in the prayer, workman requested to get the balance dues whereas in the demand notice sent by the workman on 30.12.2019, he has prayed for reinstatement and that he is willing to work with the management. There is a huge contradiction in both the applications, the reason being that the workman only wants to exploit the management by making false claim and the workman has left the job because he has started doing his own work and has taken and cleared his dues from the management.

4. Further on merits, it is admitted as correct to the extent that the workman started working with the management No.1 on 01.05.1999 and the remaining plea taken in the claim statement regarding transfer to branch Office at Chandigarh and employment from 01.05.1999 to 17.08.2015 are replied being matter of record with the submission that the workman be put to strict proof of the same. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of the claim application are denied as wrong. Prayer is made that the claim statement may be dismissed.

5. The workman filed rejoinder dated 05.03.2024 filed on 05.04.2024 wherein the contents of the written statement except admitted facts are denied as wrong and incorrect and averments of claim statement are reiterated.

6. From the pleadings of the parties following issues were framed vide order dated 24.02.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and other consequential benefits, as prayed for ? OPW

3. Whether the workman has not approached the Court with clean hands ? OPM

4. Relief.

7. In evidence the workman Avdesh Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' in examination-in-chief along with copy of reply dated 09.09.2019 filed by the management against the complaint filed by the workman regarding refusal of work and non-clearance of legal dues before the Assistant Labour Commissioner, U.T. Chandigarh vide **Mark 'A'**. AW1 / workman did not appear for his cross-examination despite availing repeated about 12 effective opportunities including opportunity subject to payment of cost. The workman neither paid the cost imposed vide order dated 12.09.2024 despite being pressed by the opposite party nor presented himself in the witness box for cross-examination nor concluded evidence. Under the circumstances, evidence of workman was closed by order vide order dated 20.09.2024.

8. On the other hand, Learned Representative for management tendered into evidence office copy of legal notice served to Avdesh Kumar vide **Exhibit 'M1'** and copy of reply dated 31.07.2019 to the complaint of Avdhesh Kumar against M/s D. K. Chemicals Ltd. in proceedings before Assistant Labour Commissioner, U.T. Chandigarh vide Exhibit 'M2' and closed evidence on behalf of the management vide his statement dated 24.09.2024.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

10. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

11. Onus to prove both these issues is on the workman.

12. Under these issues, workman Avdesh Kumar examined himself AW1 and tendered his affidavit Exhibit 'AW1/A' wherein he deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. AW1 supported his oral version with document Mark 'A'. The workman / AW1 did not present himself in the witness box for cross-examination. Testimony of workman / AW1 being incomplete cannot be taken into consideration. The workman has pleaded that on termination of his services on 17.08.2015 by refusal of work, he has lodged a complaint dated 26.03.2019 with the Labour Inspector, U.T. Chandigarh. The workman did not explain the delay of more than 3 ½ years for seeking remedy before the Labour Inspector by filing complaint on 26.03.2019 when his services were allegedly terminated on 17.08.2015. From perusal of Exhibit 'M2' it is made out that the management in reply to workman's complaint before Assistant Labour Commissioner, U.T. Chandigarh filed reply dated 31.07.2019 and set up counter claim of recovery of dues on account of transfer of commercial vehicle No.HR-55-L-0658 by the management-company on the name of the workman without any consideration on workman's assurance that consideration will be paid later on. In the present case, the workman by non-presenting himself in the witness box for cross-examination, has evaded to offer explanation to management's counter plea taken in Exhibit 'M2'. In the absence of any oral and documentary evidence of the workman, the workman has failed to prove that his services were terminated by the management w.e.f. 17.08.2015 in violation to any of the provisions of the ID Act.

13. Accordingly, both these issues are decided against the workman and in favour of the managements.

Issue No. 3 :

14. Onus to prove this issue is on the management.

15. Learned Representative for the management argued that the workman has concealed the material facts of un-authorised absence from duty and his liability to pay consideration amount of transfer of commercial vehicle by the management-company on his name. To my opinion, the aforesaid argument advanced by Learned Representative for the management carries force because the workman despite availing repeated opportunities did not present himself in the witness box and avoid the test of cross-examination, so that truth may not come on record. Thus, the workman is guilty of concealment of material facts.

16. Accordingly, this issue is decided in favour of the managements and against the workman.

Relief :

17. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 24.09.2024.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Guddi W/o Sh. Deepak Jaunwal R/o House No. 41, Phase 2, Ram Darbar, Chandigarh, have changed my name from Guddi to Guddi Jaunwal. All concerns please note.

[1784-1]

I, Deepak S/o Sh. Ishwar Dass R/o House No. 41, Phase 2, Ram Darbar, Chandigarh, have changed my name from Deepak to Deepak Jaunwal. All concerns please note.

[1785-1]

I, Aradhana D/o Mr. Augusthy R/o Sacred Heart Convent, Sector 26, Chandigarh, have changed my name from Aradhana to Aney Augustine.

[1786-1]

मैं, मनप्रीत कौर पत्नी जसप्रीत सिंह निवासी # 81, न्यू दर्शनी बाग, मनीमाजरा, चंडीगढ़, ने अपना नाम मनप्रीत कौर से बदलकर ज्योति रख लिया है।

[1787-1]

I, Deepak Kumar S/o Rampati # 72/6, Village Butrela, Sector 41-B, Chandigarh, have changed the name of my minor son from Sarpanch to Adarsh Kumar.

[1788-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."